



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
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Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

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Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
American Stone Virginia LLC
FOR
American Stone Virginia LLC facility
VPDES Permit No. VAG110362**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and American Stone Virginia LLC, regarding the American Stone Virginia LLC facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable Permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "American Stone Virginia LLC" means American Stone Virginia LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. American Stone Virginia LLC is a "person" within the meaning of Va. Code § 62.1-44.3.
3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means the discharge of a pollutant.
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "DMR" means Discharge Monitoring Report.
9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. "Facility" or "Site" means the American Stone Virginia LLC facility located at 8179 Arba Avenue, Ladysmith, Virginia 22546, from which discharges of process wastewater and stormwater associated with industrial activity occur.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "O&M" means Operation and Maintenance Manual.
15. "Permit" means VPDES General Permit No. VAG11, which was reissued under the State Water Control Law and the Regulation on October 1, 2013 and on January 1, 2019 and which expires on December 31, 2023. American Stone Virginia LLC first applied for coverage under the Permit and was issued Registration No. VAG110240 in 2003. Its permit coverage under this registration number was allowed to expire following its failure to submit a registration statement for continued coverage by the deadline (July 2, 2013) for the 2013 through 2018 permit cycle. American Stone Virginia LLC submitted a new registration statement on June 23, 2017, for the 2013-2018 permit cycle, and was issued

permit coverage under Registration No. VAG110362 on June 27, 2018. American Stone Virginia LLC was issued renewed Permit coverage on December 27, 2018, for the 2019-2023 permit cycle.

16. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
17. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
18. "Registration statement" means a registration statement for coverage under the VPDES general permit for concrete facilities, VAG11.
19. "Regulation" means "The Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concrete Products Facilities," 9 VAC 25-193-10, *et seq.*
20. "RP" means Responsible Party.
21. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
22. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
23. "SWPPP" means Stormwater Pollution Prevention Plan.
24. "Va. Code" means the Code of Virginia (1950), as amended.
25. "VAC" means the Virginia Administrative Code.

26. "VPDES" means Virginia Pollutant Discharge Elimination System.
27. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. American Stone Virginia LLC owns and operates the American Stone Virginia LLC precast concrete facility located at 8179 Arba Avenue, Ladysmith, in Caroline County, Virginia, which discharges process wastewater and stormwater associated with industrial activity.
2. The Permit allows American Stone Virginia LLC to discharge industrial stormwater and process wastewater from the Facility to an unnamed tributary of Stevens Mills Run, in strict compliance with the terms and conditions of the Permit.
3. Stevens Mills Run is located in the Mattaponi and York River Basin. Stevens Mills Run has neither been monitored nor assessed. The nearest assessed downstream segment is Polecat Creek, 3.2 miles downstream from the Facility, which is listed in DEQ's 2018 draft 305(b) report as impaired for aquatic life use, due to dissolved oxygen. 5.8 miles downstream from the Facility, Polecat Creek is listed as impaired for recreational use due to bacteria, and for aquatic life use due to benthic macroinvertebrate bioassessment.
4. The Permit and Regulation required that American Stone Virginia LLC submit a registration statement for coverage under the Permit at least 60 days prior to the expiration date of the existing permit if it intended to continue discharging activities regulated by the VAG11 Permit. DEQ reminded American Stone Virginia LLC to submit the Registration Statement to continue coverage on June 12, 2013, and again on August 27, 2013. American Stone Virginia LLC did not respond to the reminder letters, nor submit an updated registration statement.
5. Annual DMRs were received by DEQ for the 2015 and 2016 monitoring periods on May 2, 2016, and January 12, 2017, respectively.
6. On March 27 and March 30, 2017, DEQ compliance staff conducted an inspection of the Facility and documented the following deficiencies with the State Water Control Law and applicable Regulations:
 - a. The Facility's treatment system was observed to be discharging and comingling with stormwater without an applicable Permit. The Facility's permit coverage expired on September 30, 2013, without the submission of a registration statement for continued coverage to DEQ.
 - i. 9 VAC 25-193-60 requires that any owner seeking continued coverage under the general permit shall complete and submit the VPDES general permit registration statement no later than 60 days prior to the expiration

date of the existing permit. Late registration for existing facilities shall not confer retroactive authorization to discharge.

- ii. State Water Control Law § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
 - iii. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
7. American Stone Virginia LLC did not submit the registration statement for the Facility until June 23, 2017. Coverage under the Permit was granted under a new registration number, VAG110362, on June 27, 2017.
8. During a subsequent DEQ file review, DEQ staff documented compliance deficiencies with respect to the requirements of the Permit, including the following:
- a. The 1st quarter 2018 DMR was received late: due April 10, 2018, received May 22, 2018.
 - i. Part III.C.1 of the Permit requires that DMR results be submitted no later than the 10th day of the month after monitoring takes place.
 - b. The 2nd quarter 2018 DMR reported 58 mg/L for the TSS monthly concentration average.
 - i. Part I.A.1 of the Permit contains a monthly concentration average limits of 30 mg/L for TSS.
9. On December 27, 2018, American Stone Virginia LLC applied for, and was issued a renewal of, their VAG110362 Permit coverage for the 2019 through 2023 period.
10. On January 8, 2019, DEQ compliance staff conducted an inspection at the Facility and documented the following compliance deficiencies:
- a. The Facility’s O&M Manual had not been updated since 2008.
 - i. Part I.B.8 of the Permit requires that the permittee develop and update the O&M manual for the Facility.
 - b. No SWPPP training program had been implemented or conducted for Facility staff.
 - i. Part II.F.6.f.(6) of the Permit requires that the permittee establish a schedule for SWPPP training and conduct stormwater training for employees.
 - c. The Facility’s SWPPP required updates to address references to “waste oil.”

- i. Part II.F.3 of the Permit requires review and amendment to the SWPPP within 60 days when it is determined that modifications are necessary due to site changes or deficiencies.
- d. Waste concrete piles were not labeled on the site map.
 - i. Part II.F.6.c of the Permit requires that the site map accurately demonstrate features pertinent to stormwater and wastewater management.
- e. Stormwater flow from the dredged concrete solids was not directed towards a settling basin.
 - i. Part I.B.5 of the Permit requires the permittee to properly manage waste concrete and settling-basin-dredged solids.
- f. There was no documentation of any quarterly routine Facility inspections since the 4th Quarter of 2016.
 - i. Part II.F.6.f.(5) of the Permit requires that the permittee conduct and fully document quarterly routine facility inspections.
- g. The O&M Manual did not contain a description of how American Stone Virginia LLC would manage and adhere to the requirement for one-foot of freeboard in the wastewater basins.
 - i. Part I.B.10 of the Permit requires that the permittee maintain the minimum freeboard in wastewater basins, and document how it achieves this within the O&M manual.
- h. Housekeeping at the Facility was deficient: two 55-gallon drums were uncovered and exposed to stormwater; a waste bucket of unidentifiable liquid was exposed to stormwater; an unknown white gelatinous material covered the ground at the maintenance area; the hay bale filter at the three-cell settling basin required replacement; an oily sheen was observed on the ground at the acid wash area; residual sediment was observed on the rip-rap after the Outfall 001 pipe; and petroleum product was observed on the ground at the fueling station
 - i. Part II.F.6.f.(2) of the Permit requires the permittee to maintain good housekeeping practices in areas exposed to stormwater.

11. During the January 8, 2019, inspection, the following deficiencies were observed with respect to laboratory and sample requirements.

- a. 4th Quarter 2018 DMR October 31, 2018, sample received by the lab outside of temperature requirements on November 2, 2018 (TSS); sample held outside of 15 minute holding time at lab (pH)
- b. 3rd Quarter 2018 DMR September 5, 2018, sample did not record the temp of the sample on COC upon lab receipt (TSS); September 5, 2018, and September 17, 2018, samples analyzed outside of the 15 minute holding time at lab (pH); no chain of custody available
- c. 2nd Quarter 2018 DMR June 22, 2018, sample analyzed outside of the 7-day holding time at the lab (TSS); May 8, 2018, sample COC unavailable for review (TSS); May 8, 2018, and June 22, 2018, samples analyzed outside of the 15 minute holding time at lab (pH); no chain of custody available
- d. 1st Quarter 2018 May 8, 2018, sample was sampled outside of the monitoring period (TSS and pH); no documentation available for collection time, analysis

- time, or calibration (pH); no chain of custody available (no samples collected during actual monitoring period)
- e. 4th Quarter 2017 DMR October 9, 2017, sample did not record temperature on COC upon lab receipt (TSS); October 9, 2017, sample result not reported to DEQ on this DMR (reported on 3rd Quarter 2017 DMR) (TSS); December 27, 2017, sample received by lab outside of temp requirement (TSS); December 27, 2017, sample analyzed outside of 15 minute holding time at lab (pH).
 - f. 3rd Quarter 2017 DMR reports data from a sample taken during the 4th Quarter of 2017 (TSS and pH); no documentation was available including sample collection time, analysis time, or calibration records (pH); chain of custody not available
 - g. Documentation of initial demonstration of capabilities (IDC), laboratory control samples, NIST certification, and calibration record were unavailable (pH)
 - h. pH meter was not available during the January 8, 2019, inspection.
12. Part III.A of the Permit requires the permittee to properly calibrate and perform maintenance on monitoring equipment, conduct representative monitoring, and analyze samples in accordance with 1 VAC 30-45.
13. Part III.B of the Permit requires the permittee to document, and maintain record of, sampling methods and results.
14. Part III.Q of the Permit requires the permittee to properly operate and maintain all facilities and systems of treatment and control that are used to achieve compliance with the Permit, including adequate laboratory and process controls.
15. Based on the results of the Facility file reviews, the March 27 and 30, 2017, inspection, and the January 8, 2019, inspection, the Board concludes that American Stone Virginia LLC has violated conditions: Part III.C.1; Part I.A.1; Part I.B.8; Part II.F.6.f.(6); Part II.F.3; Part II.F.6.c; Part I.B.5; Part II.F.6.f.(5); Part I.B.10; Part II.F.6.f.(2); Part III.A; Part III.B; and Part III.Q of the Permit as noted in paragraphs C(8) through C(14) of this Order. The Board concludes that American Stone Virginia LLC has violated sections: 9 VAC 25-193-60 and 9 VAC 25-31-50 of the Regulation, as noted in paragraph C(6) of this Order. Furthermore, the Board concludes that American Stone Virginia LLC has violated section § 62.1-44.5 of the State Water Control Law, as noted in paragraph C(6) of this Order.
16. NRO issued Warning Letters and Notices of Violation for the violations noted above as follows: WL No. W2018-05-N-1009, issued May 20, 2018; WL No. W2018-8-N-1019, issued August 22, 2018; NOV No. W2017-04-N-0001, issued May 17, 2017; and NOV No. W2019-06-N-0005; issued July 3, 2019.
17. American Stone Virginia LLC responded to the Notice of Violation on April 30, 2019, by submitting a schedule of corrective action to address the violations. A schedule for corrective actions is incorporated in Appendix A of the Order.

18. Department staff and American Stone Virginia LLC representatives met on August 13, 2019, to discuss the violations, including American Stone Virginia LLC's written response.
19. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
20. The Department has issued coverage under no permits or certificates to American Stone Virginia LLC other than VPDES Permit No. VAG11.
21. The unnamed tributary of Stevens Mills Run is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
22. Based on the results of the Facility file reviews, the March 27 and 30, 2017, inspection, and the January 8, 2019, inspection, the Board concludes that American Stone Virginia LLC has violated the Permit, as described in paragraph C(1) – C(21), above.
23. In order for American Stone Virginia LLC to return to compliance, DEQ staff and American Stone Virginia LLC have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders American Stone Virginia LLC, and American Stone Virginia LLC agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$17,905.30** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

American Stone Virginia LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, American Stone Virginia LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of American Stone Virginia LLC for good cause shown by American Stone Virginia LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, American Stone Virginia LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. American Stone Virginia LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. American Stone Virginia LLC declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by American Stone Virginia LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. American Stone Virginia LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. American Stone Virginia LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. American Stone Virginia LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay

compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and American Stone Virginia LLC. Nevertheless, American Stone Virginia LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after American Stone Virginia LLC has completed all of the requirements of the Order;
 - b. American Stone Virginia LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to American Stone Virginia LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve American Stone Virginia LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by American Stone Virginia LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of American Stone Virginia LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind American Stone Virginia LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of American Stone Virginia LLC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, American Stone Virginia LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20th day of March, 20 20.



Thomas Faha, Regional Director
Department of Environmental Quality

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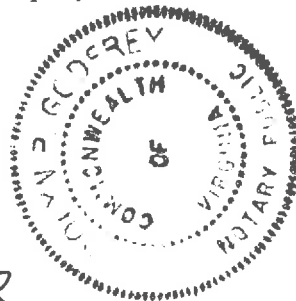
American Stone Virginia LLC voluntarily agrees to the issuance of this Order.

Date: 1-16-2020 By: [Signature], MANAGING MEMBER
(Person) (Title)
American Stone Virginia LLC

Commonwealth of Virginia
City/County of Spotsylvania/In Caroline

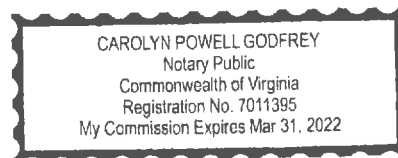
The foregoing document was signed and acknowledged before me this 16th day of
January, 2020, by S. DINO DIANA who is
Managing Member of American Stone Virginia LLC, on behalf of the company.

[Signature]
Notary Public
7011395
Registration No.



My commission expires: March 31, 2022

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. **American Stone Virginia LLC shall complete the following by March 31, 2020:**

- a. **Housekeeping:** Good housekeeping practices in accordance with Permit Part II.F.6.f.(2), including addressing all observations noted in the January 8, 2019, inspection, shall be implemented, and evidence in the form of photographs and work logs shall be documented and presented to DEQ upon request.
- b. **Laboratory and Sampling:** Submit to DEQ for comment a written statement detailing the methodology that American Stone Virginia LLC will employ to ensure Permit compliance with pH sample analysis and laboratory processes. Submit a copy of *all* pH meter calibration records, photographic evidence of pH buffers to include expiration dates, records of initial demonstration of capacity for the pH meter, a photograph of laboratory control samples, and the invoice for when the pH meter was purchased.
- c. **Settling Basin:** Proper maintenance of, and proper process wastewater and stormwater management from, the settling basin shall be completed; evidence in the form of photographs and work logs shall be documented and presented to DEQ upon request. A description of how the Facility will maintain the 1-foot freeboard requirement shall be incorporated into the O&M manual, per the submission requirements listed in Appendix Item A.1.g.
- d. **Routine Facility Inspections:** Submit a copy of the quarterly routine facility inspection report for the two full quarters following execution of this Order. These shall be received no later than the 10th day of the month following the examined quarter, e.g., a routine facility inspection for the January – March monitoring period would be due no later than April 10th.
- e. **Training:** Submit employee SWPPP training records to DEQ within 30 days of the employee training, but no later than 12 months following execution of this Order.
- f. **SWPPP:** Submit a completed (including signature/date) SWPPP for the Facility to DEQ for comment. Respond to any DEQ comments within 14 days. This item shall include an employee training schedule.
- g. **O&M Manual:** Submit a completed O&M manual for this Facility to DEQ for comment. Respond to any DEQ comments within 14 days.
- h. **Site Map:** Submit to DEQ an updated site map of the Facility's grounds.

DEQ Contact

Unless otherwise specified in this Order, American Stone Virginia LLC shall submit all requirements of Appendix A of this Order to:

**Virginia Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193**